IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 412 of 1987
with
CIVIL APPLICATION No 6056 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TRUSTEES OF SONI PANCH, SONI ZUMAKLAL PREMCHAND

Versus

HIERS OF RAYCHAND H DARJI

Appearance:
DELETED for Petitioner No. 1-3,5
MR JT TRIVEDI for Petitioner No. 4,6-8
MR BJ TRIVEDI for Petitioner No. 4,6
MS DEVYANI N DAVE for Petitioner No. 4,6
MR SN SHELAT for Respondent No. 1
..... for Respondent No. 1/1
MR VIREN G DAVE for Respondent No. 1/1/A-1/2

CORAM : HON'BLE MR.JUSTICE KUNDAN SINGH

Date of decision: 03/10/2003

ORAL JUDGEMENT

1. This Civil Revision Application has been filed by the petitioners for quashing and setting aside the judgment and order dated 3-5-1986 passed by the Extra Assistant Judge, Panchamahalas at Godhara, whereby Regular Civil Appeal No. 80 of 1983 has been dismissed and the judgment and decree dated 30-4-1983 passed by the Civil Judge (SD), Dahod in Regular Civil Suit No. 187 of 1979 has been confirmed.

2. The plaintiffs filed Regular Civil Suit No. 187 of 1979 against the defendant - tenant for possession of the suit property on the grounds; (i) the tenant has made permanent structure, (ii) the petitioners require the suit property bonafide and reasonably for the use of the trust, (iii) for arrears of rent for more than six months as the tenant was not ready and willing to pay the rent of the suit premises and (iv) for rent and mesne profits of Rs.346/- with interest at the rate of 12% p.a. The original tenant died during pendency of the suit.

3. The present respondents - defendants being heirs and legal representative of the original deceased tenant-defendant contested the suit by way of filing the written statement before the trial Court. The respondents denied all the assertions made in the plaint that Soni Panch Trust requires the suit property for its reasonable and bonafide use. It is also stated in the written statement that the defendants would suffer greater hardship if the suit is allowed. It is also denied that the defendants had made permanent structure in the suit premises. The notice issued by the plaintiffs is not legal and valid one. Contractual rent is not standard rent and the standard rent may be fixed as contractual rent is too excessive and standard rent should be Rs.5/- p.m. The suit is not maintainable at law and hence the same deserves to be dismissed with costs.

4. The trial court framed the following issues :

i. Whether the plaintiffs prove that the defendants without permission of the plaintiffs erected a wall with cement, sand and limes and thereby constructed permanent structure ?

ii. Whether the suit property is bonafide and reasonably required for the purpose of trust ?

iii. Whether the defendants are in arrears of rent for more than six months and they are ready and willing to pay the rent ?

iv. What is standard rent of the suit property ?

v. Whether the notice given by the plaintiffs to the defendants is legal one?

vi. Whether the trust is registered one ?

vii. Which party would suffer comparative hardship ?

viii. Whether the plaintiffs are entitled to recover the amount of rent and interest ?

ix. What amount should be awarded to the plaintiffs for rent and notices expenses?

x. Whether the plaintiffs are entitled to the decree of possession ?

5. The trial Court answered issues no.1, 2, 3 and 10 in negative where as issue no. 4 was decided that the standard rent of the suit property is Rs.12/-p.m. The issue no. 5 and 6 were decided in affirmative. The issue no. 7 was decided that if the decree is passed, greater hardship would be caused to the respondents. Whereas issues no. 8 and 9 did not arise to decide.

6. After considering the documentary and oral evidence on record, pleadings of the parties and the arguments of the learned advocates for the parties, the trial Court dismissed the suit holding that the plaintiffs are not entitled for recovery of possession of the suit premises. Being aggrieved and dissatisfied with the judgment and decree of the trial Court, the plaintiffs preferred Regular Civil Appeal No. 80 of 1983 before the District Court, Panchamahals at Godhara. After considering the material on record and hearing the learned advocates for the parties, the lower appellate dismissed the appeal vide judgment and order dated 3-5-1986. Therefore, the present petitioners have filed this civil revision application u/s 29 (2) of the Bombay Rent Act before this Court.

7. It appears from the judgment and order of the trial Court, the petitioners have not pressed the ground of non-payment of arrears of rent of the suit premises. In the present revision application, learned counsel for the petitioners has argued mainly on three counts; (i) reasonable and bonafide requirement of the suit property by the plaintiffs, (ii) permanent erection of wall and (iii) the petitioners have filed Civil Application No. 6057 of 2003 in this revision application for producing and taking into consideration additional evidence on record and produced additional evidence to show that the respondents have acquired another suitable property.

8. The trust of the plaintiffs has big piece of land having several shops and one of them is the suit property. It is stated that the trust wants to construct a community hall "Jaman wadi" and the plaintiffs require the suit premises for passage and the plans were prepared by the Diploma Holder Architect who works in Municipality and his evidence was recorded at exh. 66 by the trial Court. It is stated by the said witness at exh. 66 that he has prepared the plan. The lower appellate court has considered this aspect regarding reasonable and bona fide requirement of the suit premises on the basis of the evidence on record. Narandas Motilal Soni exh.43 and Sumanchandra Chhaganlal Soni exh. 60 in their evidence have stated that the expenses of the construction would be about Rs.1,50,000/-. While the trust has fund of Rs.25,000/- only. Both said witnesses have admitted that they have not produced any documentary evidence to show that they have fund of Rs.25,000/- and the trust has to collect Rs.1,25,000/- for construction of "Jaman wadi". Upon finding that the trust has no sufficient fund to construct "Jamanwadi" the lower appellate court came to the conclusion that the plaintiffs have no reasonable and bonafide requirement of the suit property. Moreover, the lower appellate court also found that the in case if the defendants are evicted from the suit property, the defendants-respondents would suffer greater hardship. The lower appellate court has considered the relevant provisions of law. The lower appellate court also considered that requirement of the suit property by the trust may not be reasonable and bonafide but the requirement is condition precedent before proceedings to evict the tenant. While with regard to greater hardship the appellate court has considered that the defendants would suffer greater hardship if they are evicted from the suit premises. The defendant, his wife and sons are residing in the suit premises. Though the defendant has stated in his evidence that one of his sons was residing at the relevant point of time of deposition, with his

sister-in-law. The lower appellate court has considered this fact and found that there were other at least 4 to 5 members in the family of the defendant. The defendant was carrying on his business of tailoring in the suit premises and the defendant was also residing in the suit premises with his family members. Locality of the suit property is market area. Considering the income of the defendants, the lower appellate found that even if the defendants are thrown outside the suit premises, the defendant and his family members would not get the premises for residence as well as commercial purposes at so cheap rent. The defendant belongs to Vahora community and Vahora community would let out premises to him. But the Lower appellate court found that no person has been examined from Vahora community to show that the shops are ready to let out to the defendant within the paying capacity of the defendant. The other shops are not available at such low rent of Rs.12/- and rent would not be less than Rs.100/- p.m. plus some premium and municipal tax etc. if the defendant takes another premises for his use. The trust is of Soni community and the persons of "soni" community will have to go to "Jamanwadi" through the persons of Vahora community. If the defendants are evicted from the suit premises then the suit premises would be place or passage for going to "Jamanwadi".

9. Next contention of the learned counsel for the petitioner is regarding permanent construction of partition wall made by the defendants in the suit premises. As per Section 13 (1) (ii) of the Bombay Rent Act, permanent structure is exempted if that is of partition wall door or lattice work or the filling of kitchen-stand or such other alterations made in the premises as can be removed without serious damage to the premises. In the present case, alleged partition wall constructed by the defendant in the suit premises is not a partition wall but it is a "parti" wall between two tenants and that would not amount to a partition wall as has been considered by the Courts below. Partition wall means within the space in the tenanted premises and some wall is constructed for making partition of size and space of a particular portion of the property. In the present case, permanent structure was made by the defendant tenant between two tenants i.e. the defendant and the other tenant. As such, the exception is only to the partition wall and lattice. It is no other partition wall which is exempted under explanation to Section 13 (1) (ii) of the Bombay Rent Act. He has submitted that the courts below have erroneously considered the "parti" wall as "partion" wall for giving benefits of partition

wall to the defendants. As such, the findings of the courts below are based on erroneous interpretation of law and hence the judgment and order of the courts below are not sustainable in the eye of law. I have considered the contentions raised by the learned counsel for the petitioners regarding partition wall made by the defendants in the suit premises.

10. It is admitted by witness Narandas exh. 43 in his cross-examination that it was a partition wall between the houses no. 3, 6, 2, 5 and that partition wall is still in existence. It was also admitted by him in his cross-examination that it is true that most of portion of the house occupied by the defendant-tenant was burnt in the fire. That fire started from the side of the rented premises occupied by neighbour Pinjara and due to short-circuit wall was burnt and most of the residential portion of the tenant was damaged due to the fire. It was also admitted by the said witness that it is true that the tenants are residing after making "pakka" partition wall. This Court in the case of Deviprasad Vrajlal Kachhiya V. Chhotalal Narottamdas Panchal & Another, reported in 1993 (2) G.L.R. 1703, wherein it has been considered that the construction made by the tenant without obtaining consent of the owners and permission from the municipality was considered not to be unreasonable. In that case, the demised premises were of kutcha construction and there was one room with a varandah on the west. The tenant had erected the varandah at his own cost. The demised premises were in dilapidated condition and the landlord failed to keep it in habitable repairs. The roof of the said premises was bent and was likely to fall down. Therefore, the tenant replaced the wooden roof and placed Mangalore tiles with the support of wooden bamboos, and for such work, no permission was required from the owner of the suit property. In that case, this Court found that the impugned actions of the tenant cannot be said to be unreasonable, in respect of the user of the demised premises. The user of a prudent man test if applied, then in that case also it cannot be said that the offending structures is, in any way, unreasonable, destructive or permanently injurious. In fact, as such, the offending structures cannot be said to be permanent structures. In such case, ordinarily, an expert's opinion will be very important. The opinion of an Engineer or Architect or an expert in the building construction will, surely, assist the Court to determine as to what is the nature of the offending structure. In absence of such evidence, it cannot be said that the erected portion was of permanent nature.

11. Contention of the learned counsel for the respondents in this respect is that even if it is assumed that the partition wall was made permanently with bricks, cement, sand etc. would not amount to a structure of permanent nature. In support of his contention, he has relied on the decision of this Court in the case of Jaikisondas Mangaldas, died, by his heirs and L. Rs. and others, V. Abdul Rehman Haji Ahmedbhai and others, reported in AIR 1975 Guajrat 205, where partition wall made at a particular place was made at some other place, this Court has taken view as under :

> "It is a permanent structure which the defendants have not proved that its removal and reconstruction of the partition wall at its original site will cause any serious damage to the suit premises.
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> To construct a partition wall cannot be said to cause waste in the premises let out to a tenant. It is intended to protect a property and to make it more serviceable.

12. Similar view is taken by this Court in the case of Memon Noormohmad Adam since deceased through his heir and legal representatives Memon Khatijabai Abubakar & Others Vs. Miyanji Abdulkader Nanamiyan and Others, reported in 1992 (2) G.L.H. (U.J.) 16, wherein it has been observed as under :

> "The idea of this provision is to see that the tenant is not subjected to residence in the premises in a state of dilapidated condition. No landlord can be permitted to subject his tenant to stay in such premises. In such circumstances, if the tenant carries out repairs thereof in order to make it habitable, he cannot be said to have erected any permanent structure even if it amounts to raising of altogether new walls in the place of old dilapidated walls."

13. Similar Rule has been laid down by this Court in the case of Vora Kadarbhai Majidbhai V. Mansuri Jusabhai Shakurbhai, reported in 2001 (3) G.L.R. 3, holding as under :

> "Thus under this Explanation construction of partition wall or opening of a door cannot be said to be permanent wall."

14. The contention of the learned counsel for the respondent appears to have force in view of the fact that in the present case the wall between petitioners-tenants and other tenant Pinjara was burnt out due to short circuit from the side of house of Pinjara tenant and that had caused damage to the property occupied by the defendants-tenants. Obligation on the part of the landlord is to make the tenanted premises habitable by making necessary repairs. The defendant-tenant has stated in his deposition that he made request to the landlord to make the suit premises habitable by making necessary repairs in the suit property but the landlord stated that he would not adjust any amount of repairs in the amount of rent if any repair is made by any of the tenants. If no written permission was given by the landlord for making repairs by erecting wall between two tenanted premises, burnt as a result of fire spread from the side of other tenanted premises, it has to be erected by the tenants for making the same habitable. If no steps are taken by the landlord, the tenant cannot wait for a long period for permission either written or oral from the landlord. No doubt, the provisions of the Rent Act require written permission from the landlord for carrying out repairs in the tenanted premises. But the tenant having small piece of premises and if that portion is burnt and the premisses was damaged, such premises is required to be repaired then and there. As this Court has also already held that for making premises habitable if necessary repairs are made by the tenant in the tenanted premises that would not amount to a permanent structure. In the present case, the wall was constructed with bricks, cement, sand etc. at the costs of Pinjara tenant, it cannot be said to be a permanent structure in view of Explanation to Section 12 (1) (b) of the Rent Act. It is not a case where something new has been constructed by the tenant of permanent nature. But it is a structure of a partition wall made for making the tenanted premises habitable by carrying out necessary repairs, it cannot be said to be a structure of permanent nature.

15. Learned counsel for the petitioners contended that even if the partition wall is constructed with bricks, cement, sand etc. it will be considered to be a structure of permanent nature, that cannot be removed without causing damage to the tenanted property. Permanent structure is not defined in the Rent Act. If the repairing work is not made by the landlord, then tenant may get it done but for that written permission of

the landlord is required. The learned counsel for the respondents contended that if that permission is not given, at the most, the tenant would not be entitled to adjust that amount of repairing towards the amount of rent u/s 23 of the Rent Act. It was also pointed out by him that a Community Hall (Jamanwadi) was closed as it was not functioning since long as it was admitted by witness Narandas Motilal's Son one of the trustee that there is no electricity in the Jamanwadi. It was also admitted by him that it is true that Jamanwadi is in dilapidated condition because it is not being used and if that Jamanwadi is not being used as per the finding recorded by the lower appellate court, the petitioners plaintiffs have no sufficient fund for making Jamanwadi and if Jamanwadi is constructed no question arises for making a passage on the suit premises after having evicted the defendants as it was also pointed out by the learned counsel for the respondents that the trust has already acquired tenanted portion from the Pinjara the other tenant in the year 1992 during pendency of this Revision Application in this Court. The learned counsel for the petitioners could not controvert this contention of the learned counsel for the respondents. It means that one rented premises occupied by other tenant Pinjara has already been occupied by the trust and if the Jamanwadi is constructed the petitioners can have sufficient passage from that portion. At the relevant point of time that portion was in possession of other tenant Pinjara and now that portion has been taken over by the trust and hence there is no need for getting the defendants evicted from the suit premises. If reasonable and bona fide requirement is not established by the landlords plaintiffs no question arises for proving comparative hardship.

16. Considering the facts and circumstances of the case and the contentions made by the learned counsel for the parties as well as the findings recorded by the lower appellate Court, I am not in a position to hold otherwise that the trust of the petitioners requires the suit premises for reasonable and bona fide requirement for their personal use and occupation.

17. So far as the partition wall is concerned, I have also come to a conclusion that the findings recorded by the Courts below are not perverse and if they are not perverse and are not arrived at on the basis of wrong application of any statutory provisions of law, this Court would be reluctant to interfere with the findings of the Courts below in revisional jurisdiction u/s 29 (2) of the Rent Act.

18. So far as the additional ground is concerned, the plaintiff has filed an application being Civil Application No. 6057 of 2003 seeking permission for producing additional evidence with regard to subsequent events and stated therein that the respondents have acquired suitable residential property i.e a bungalow in Darji Cooperative Society, situate opposite Marketing Yard and the said property other bungalows have been constructed on Final Plot No. 79/2, T.P. Scheme No. 1, Dahod having 850 to 900 sq. ft. of built up areas. The respondents have also acquired a large property in the joint names of their wives namely Hemaben Kamleshkumar and Manoramaben Ghanshyambhai in the same locality, just opposite the suit premises i.e. the premises forms the subject matter of the present litigations. The copies of the documents viz. Municipality papers and from Property Card of City Survey, Dahod have been filed. Property bearing No. 323/1, Mahatma Gandhi Road, Dahod is purportedly purchased in the names of two ladies for Rs.2,99,991/-. That property comprises three floors and has two shops and one shop, where a beauty parlour was being run, is presently in the possession of the respondents. Over and above the aforesaid properties, there is adequate accommodation of at least six rooms or so and that said property is purchased on 15-12-1997. The respondents along with their family members are residing in the said property purchased by them. The suit property is being occasionally used by them. As such, there is no hardship to the defendants at this stage if they are evicted from the suit premises. The petitioners also gave an offer for providing a shop, admeasuring 10 ft. depth x 7 ft. width of frontage, at the level of the basement but that offer was declined by the respondent Ghanshyam Kanaiyalal. That offer was made with a view to get the suit premises for their use and occupation of the trust. Some extracts from Dahod Municipality have been filed to show that Hemaben Kamleshkumar Parmar and Manoramaben Ghanshyambhai Parmar have acquired some properties which have two storeys of R.C.C. House, "Otala" at ground floor, one shop having shutter and two rooms in first floor. In fact, some other documents from the said municipality have been filed. An affidavit has also been filed on behalf of the petitioners, wherein it is stated that it has come to the information of the trustees of the trust that the respondent No. 1/1/B grand son of original tenant Kamlesh Kanaiyalal Parmar had purchased land admeasuring 73.11-50 sq.mt. on 27-5-1991. The said plot of land is situated in Darji Cooperative Housing Society and a "pakka" structure has been constructed thereupon

subsequently and the same has been built up area of about 800 sq. ft. Another plot of land has been purchased in the name of mother of the present respondents - Surajben Jagannath Parmar and construction has been made thereon. But that bungalow was sold off in 2000-2001. The petitioners have also filed other documents to show that Kamlesh Kanaiyalal Parmar respondent no. 1/1/B purchased some other plot and constructed a house and the same is still there.

19. In support of his contention, affidavit-in-reply has been filed by Ghanshaymbhai in Civil Application No. 6057 of 2003 stating therein that some property purchased by Kamleshkumar Kanaiyalal Parmar on 7-5-1991. The allegation is that "pakka" construction was made thereupon and the respondents were living this is totally incorrect fact. But that property was purchased by the wife of Kamleshbhai from "Stridhan". That property was purchased by Hemaben and therefore the respondents cannot claim over that property. It is also stated that the property purchased by Ghanshyambhai in Darji Cooperative Housing Society in the joint name is totally incorrect fact but that property was purchased by Manoramaben. It is further stated that the property purchased in the name of Manoramaben is under dispute and the same property is not in possession of Manoramaben. Regarding the suit property Civil Suit No. 25 of 2001 is filed by one Rajesh Vasan Bhandar, Rajesh Bhagwandas Shah and unless and until the said suit is decided that property is not in possession of Manoramaben as the property is in possession of third party and that cannot be considered at this stage.

20. Further affidavit-in-reply is filed by Ghanshyambhai Kanaiyalal, wherein he has stated that one of the property is purchased by Hemaben Kamleshkumar. That property was purchased by Kamleshkumar and that fact is not in dispute. Kamleshkumar is residing separately since 13 to 14 years from 1991-92 in the aforesaid property purchased by him. The present defendant Ghanshyambhai and his family members have no rightful claim to reside in the house purchased by Kamleshkumar. The other property is said to have been purchased in the name of Surajben mother of the defendant is in the name of Surajben but there is no property in the name of Surajben mother of the defendant no. 2 and Ghanshyambhai. The property alleged to be the property of Surajben is the property of one Shakuntalaben Rajnikant Parmar. That property is in possession of Surajben. Husband of Surajben was suffering from severe cancer that property was sold to said Shakuntalaben and

due to economic crises and urgent need of money for medical treatment of his father - husband of Surajben, the said property was sold and there is no property in the name of Surajben at that time. The property in the name of Hemaben is still under dispute.

21. On the basis of the aforesaid affidavits, the contention of the learned counsel for the petitioners is that the suitable suit property has been acquired by the defendants - tenants and one of the properties was acquired and sold and hence they will be assumed to be in possession of that property and hence they are liable to be evicted from the suit property u/s 13 (1) (l) of the Rent Act on the ground of acquisition of suitable accommodation by the defendants. Some property was purchased by the mother of Ghanshyambhai and right of the tenants to retain the suit property is extinguished and hence the landlord would be entitled to recover possession of the suit property.

22. The next contention of the learned counsel for the petitioners is that new events can be considered by this Court and the present revision application can be decided on the basis of the new changes or subsequent events which had taken place after filing of the aforesaid suit. Hence, on the basis of the additional evidence, the defendants-tenants are required to be evicted. In support of his contention, he has relied on the decision of the Supreme Court in the case of Hemant Rai and Another V. Raghunath Prasad, reported in A.I.R. 1981 SC 1711, wherein it has been held as under :

> "Where during the pendency of second appeal in suit for eviction of tenant on the ground that the premises were bona fide required by the landlord for starting his business, the tenant pointed out that the landlord had acquired possession of another premises in the building in question, which would meet the landlord's need for his business, the finding given by ignoring this admitted position would not be binding in appeal under Article 136 of the Constitution of India. The said suit was filed for eviction from two premises in the building for the purpose of reconstruction. The landlord coming in possession of the larger premises during eviction proceedings, if the landlord proves that he is interested in reconstructing the small premises, for that purpose necessary direction u/s 18 is required.

23. He has relied on the decision of the Supreme Court in the case of Vishwasrao Dadasaheb V. Shankarrao D. Kalyankar, reported in AIR 2000 SC 3613, wherein it has been held as under :

> "It is open to a Court to take into consideration any subsequent event while dealing with the matters relating to relationship of landlord and tenant governed by law enacted in that regard for passing the appropriate orders. Hence, when the tenant took possession of accommodation acquired by him during pendency of the suit filed by the landlord and therefore in law the tenant had acquired vacant accommodation, the tenant made himself liable to be evicted from the premises."

24. Learned counsel for the respondent also relied on the decision of this Court in the case of Durlabhbhai Manibhai Naik & Ors. Vs. Bhikhubhai Keshavlal Keshurbhai Mistry (Decd) Through His Heirs & Lrs. & Ors, reported in 2003 (1) G.L.R. 763, wherein it has been observed as under :

> "The possession of the suit premises was sought on the ground of reasonable and bona fide requirement of the suit premises by the landlord.
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> The plea regarding subsequent change with respect to the alternative accommodation acquired by the tenant or tenants in the name of the tenant's wife is taken. In this regard, this Court has observed in the above decision as under :
>
> "How this subsequent change has a relevance to or a bearing on the initial cause of action i.e. the reasonable and bona fide requirement of the suit premises by the landlord. Had the bona fide requirement by the landlord been believed by the Courts and the question of comparative hardship arose under Sec. 13 (2) of the Rent Act, these subsequent changes might have some bearing on the issue. In that eventuality, the Court may be required to consider the effect of such changes on the comparative hardship so as to mould the reliefs as may be necessary.
>
> Normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But, this is subject to an exception. Wherever subsequent events of fact or law which

have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the Court is not precluded from taking a 'cautious cognisance' of the subsequent changes of fact and law to mould the relief."

25. Learned counsel for the respondent has also relied on the decision of the Supreme Court in the case of Gurudev Singh V. Surjit Kumar Alias Jit and another, reported in 1996 (9) SCC 219, wherein it has been held as under :

"Normally the subsequent event stated by the widow had to be taken note by the Court but in view of serious objections raised by the respondent, ends of justice will be met by remanding the case back to the appellate authority to enable the LRs. of the first appellant to establish their claim for ejectment under the present circumstances in the light of the abovesaid provisions of law i.e. Sec. 13 (3) (a) (i) (b) of the East Punjab Urban Rent Restriction Act, 1949 (3) 1949)."

26. In the earlier affidavit, it has been stated that the property was not purchased by Kamlesh Kaniyalal Parmar but it was purchased by Hemaben from her "Stridhan". Though on the record it is shown that it was purchased by Kamlesh Kanaiyalal Parmar. Wives of both the brothers have purchased altogether different properties. Documentary evidence in that respect has been placed on the record. In the subsequent affidavit dated 23-9-2003 filed by the respondent no. 1/1/A, he has attempted to show that the property was purchased by Hemaben Kamleshkumar and another property was purchased by Kamleshkumr in the year 1991 and that he had not disputed that fact. Wife of Ghanshyambhai is also one of the purchasers of that property. The allegation that property was purchased from "Stridhan" is made to mislead this Court as to how and from whom "Stridhan" was available with the wives of the respondents no. 1/1/A and 1/1/B. Later affidavit states the fact for the first time that Kamelshkumar is residing separately from 1991-92 in the property purchased in his name due to some dispute arose between the family members. Though that property was purchased in the names of both the wives of the brothers both the brothers have engaged one and the same advocate. It was also clarified that the property which was purchased in the name of Manoramaben is under dispute for which Civil Suit No. 25 of 2001 was pending

and the said suit was filed by third party who was in possession of the said property. It has been attempted to show that the properties in the names of Hemaben and Manoramaben are different names and both the properties are in possession of the third party . Actually, the property was purchased in the joint names of wives of both the brothers. - Manoramaben and Hemaben and the suit is with regard to only one shop on the ground floor of the said property. The building so purchased is quite large and it has big shop on the ground floor which is occupied by Rajesh Bhagwandas Shah, proprietor of Rajesh Vasan Bhandar, two rooms, one beauty parlour and one ornamental balcony on the first floor and two rooms and one ornamental balcony on the second floor. The first floor and the second floor have amenities by way of bathrooms and water-closets. It appears from the plaint that the suit is only in respect of shop on the ground floor and not with respect to the other portion of the said property. A shop on the first floor run in the name of Mrugnayani Beauty Parlour was occupied by a tenant, who has vacated it and handed over possession thereof. Ghanshyam Kanaiyalal Parmar is shown as one of the three occupants of the said property. Ghanshyambhai Kanaiyalal Parmar has committed perjury and deterrent action needs to be taken against him.

27. So far as the property purchased by Surajben Jagannath Parmar - mother of the deponent is concerned, he states that the said plot is of some other person and not of his mother. It is further stated that his father was suffering from blood cancer and hence the property was sold out. So far as the requirement of the suit property by the trust is concerned, it is quite genuine, as the community wadi is already constructed and the entrance thereto has to be adequately wide. The available passage is not wide enough. The respondents have a number of premises with them, but they want to cling to the rented premises at any cost by hook or crook even by making false averments.

28. As such, the contention of the learned counsel for the petitioners is that respondents - tenants have acquired suitable property for their residence and business purposes. Under the provisions of Section 13 (1) (l) of the Rent Act, the petitioners - landlords are entitled to recover possession of the rented suit premises.

29. On the other hand, learned counsel for the respondents submitted that it is not just and proper for this Court to take and consider the additional evidence

to decide the present civil revision application on the basis of the additional evidence produced by the petitioners by way of additional affidavits which have been filed by the parties in this Court. The aforesaid suit has been decided on the basis of cause of action arose at the relevant time and there is no cause of auction which has taken place by way of additional evidence. The respondents have been given opportunity to lead their evidence to prove their case otherwise.

30. I have considered the contentions raised by the learned counsel for the parties and the additional evidence led by the learned counsel for the petitioners by way of filing Civil Application No. 6057 of 2003. No doubt this Court is empowered to admit and consider additional evidence produced by the parties in respect of subsequent events but averments of facts must be admitted and uncontroverted by the other side. If they are controverted facts which are affecting the claims of the parties the averments of pleading is must and the parties must have a reasonable opportunity of leading evidence in respect of fresh cause of action arose subsequently on happening of subsequent events. Normal rule is that whenever the matter has to be decided by the Court, the parties are given sufficient opportunity to plead material facts in the plaint or the written statement. Thereafter, the parties are required to lead or produce material or evidence in support of their claims or case and then the parties are given opportunity to lead documentary and oral evidence in support of their claim and the other side is required to cross-examine the witness examined by the concerned party. After taking into consideration the entire material on record and arguments of the learned counsel for the parties, the matter can be adjudicated as per the procedure prescribed under the Civil Procedure Code. In the present case, by way of additional evidence certain assertions have been made by the parties. But the parties have not been given opportunity to make assertions in their pleadings and they have also not been given opportunity to lead their documentary and oral evidence. In absence of such material, it would be very difficult for this Court in revisional power to allow this additional evidence by way of additional affidavits filed by the parties and to decide the issues on the basis of assertions made in the additional evidence led by the parties. For that purpose, as per the provisions of the Civil Procedure Code, there must be some cause of action for the parties, then the proceedings can be taken up and for that purpose elaborate procedure has been provided under the provisions of the Civil Procedure Code. In absence of

complete procedure of deciding the issues, it would be difficult for this Court in revisional jurisdiction to allow the additional evidence by way of affidavits to decide that issue. The above additional evidence is regarding subsequent changes or events. That additional evidence has been controverted by the other side. The decisions cited by the learned counsel for the petitioners clearly show that the subsequent events or changes during pendency of the trial is required to be considered by the Court if the pleading of the parties have been amended. But in that respect it is significant to note that the procedure for amending the pleadings has to be complied with and if the pleadings have been permitted to be amended then the matter can be decided by the trial Court itself after giving an opportunity of hearing including the opportunity of leading evidence by both the parties. At this case, fresh cause of action has arisen regarding subsequent events in which the defendants-tenants have acquired suitable premises and for the first time on 27-8-2003 that fact has been stated before the Court during pendency of this revision application arising out of suit of the year 1979. For that purpose, it is for the petitioners to institute another suit for the said fresh cause of action. Despite this Court is having power to admit the additional evidence regarding subsequent events, it would be quite difficult for this Court to remand the matter back to the trial Court for permitting the parties to amend their pleadings and after the pleadings are amended and after giving sufficient opportunity of additional documentary and oral evidence including cross-examination of the witness of the parties, fresh cause of action can be decided . As there is no bar for instituting a fresh suit in respect of fresh cause of action, particularly in the revisional jurisdiction after period of about 20 years this Court is reluctant to pass any order on the basis of the additional evidence by way of the affidavits filed the concerned parties unless the pleadings are amended. For that purpose there is no prayer in the application, hence the civil application is not maintainable.

31. Considering the submissions made by the learned counsel for the parties, relevant material on record and the decisions cited by the learned counsel for the parties, I do not find any good reason to interfere with the concurrent findings recorded by the Courts below in revisional jurisdiction under Section 29 (2) of the Rent Act. Accordingly, the present civil revision application is dismissed. Rule is discharged, with no order as to costs.

32. In view of the above order passed in the main revision application, C.A. No.6057 of 2003 does not survive and accordingly the same stands disposed of finally.

(Kundan Singh, J.)

_/\/Satwara/